10628

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 112.

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,

vs.

WILLIAM N. PEARCE AND THE MISSISSIPPI VALLEY TRUST COMPANY, EXECUTORS OF CHARLES E. PEARCE, DECEASED.

In Error to the St. Louis Court of Appeals of the State of Missouri.

STATEMENT.

The facts in this case are undisputed, as it was submitted upon a stipulation and accompanying exhibits, which, with the addition only of the plaintiff's own testimony, constitutes the entire record. Briefly stated, such facts are as follows:

The distinguished defendant in error, Major Pearce, now deceased, who appeared below *pro se*, was, in 1895, making a pleasure trip around the world, and at that time shipped four cases of curios from Yokohama, Japan, to St. Louis, Missouri, via the Canadian Pacific Railway steamer, Empress of India.

A bill of lading, in the ordinary form, was issued by the steamer, which is correctly reproduced in this record on pages 11 to 14, inclusive, in which the consignees named in the contract of shipment was Wilfred Schade and Company, St. Louis, Missouri.

The bill of lading and all interest therein was duly signed by said consignees to the plaintiff, a fact of which the plaintiff in error was never advised until after this controversy arose.

The contract of shipment contains no reference to, or agreement of any kind, as to the transportation of the goods *in bond*, nor was there any undertaking by the initial carrier, either for itself or for its connecting lines, that such transportation should be free from the inspection and examination of the goods while so in transit by the customs officers of the United States, anywhere, prior to their arrival in St. Louis, Missouri.

It was further stipulated and agreed, in said contract, that each carrier should be liable only *for loss or damage accruing on its own route*.

The goods were, in fact, bonded, and so marked, although not so specified in the bill of lading.

The four cases weighed six hundred and twenty pounds, much less than an ordinary car load.

The steamer Empress of India delivered the cases in question, in good order, to the Canadian Pacific Railway at Vancouver, B. C., properly consigned.

As the four cases weighed less than a car load, as before stated, the Canadian Pacific Railway, for its own convenience, and without being either required, or requested, by either the plaintiff or the defendant, or any other connecting line, so to do, changed the bonded destination of the goods on the way-bill or manifest from St. Louis, Missouri, to St. Paul, Minnesota.

The Canadian Pacific Railway Company transported said goods over its own and connecting line, the Minneapolis, St. Paul and Sault St. Marie Railway, from Vancouver, B. C., to St. Paul, Minnesota.

Upon the arrival of the goods at St. Paul, Minnesota, the first port of entry, the customs officers of the United States took possession thereof, and examined the goods by opening the cases and inspecting the contents of the cases, and thereafter duly assessed the duties thereon, under and in strict accordance with the laws of the United States then in force, which said duties, amounting to the sum of $264.31, were then and there paid to said customs officers in St. Paul, Minnesota, by said St. Paul, Minneapolis and Sault St. Marie Railway, and said duties so paid as aforesaid were placed upon the way-bill or manifest of said goods by said railway as advanced charges, without any other explanation of such item.

St. Paul, Minnesota, is, and was at that time, a port of entry in the United States.

The customs duties above described were, as before stated, duly levied and assessed by the customs officers at St. Paul, under the laws of the United States then and there in force.

The opening and inspecting of said cases by the United States customs officers at St. Paul was also, as before stated, in strict accordance with the laws of the United States then in force. After said inspection, examination, assessment and levy of duties at St. Paul by said customs officers of the United States, said goods were repacked by said officers in said cases, and then and there delivered by said customs officers to said Minneapolis, St. Paul and Sault St. Marie Railway, with said customs duties, amounting to the sum of $264.31, duly levied and assessed thereon by said customs officers, which said sum was duly paid to said customs officers by said railway, and marked as advanced charges without any other explanation thereon on the way-bill or manifest of said goods by said railway.

Said customs duties would have been collected in the city of St. Louis had said goods been transported to said city in bond, without breaking bulk, instead of to St. Paul, and, pending said collection, as well as during the examination and inspection of said goods by said United States customs officers, said officers would have retained the custody, control and possession of said goods until said duties or customs charges were paid.

After paying the charges on said goods to the customs officers of the United States at St. Paul, and after the redelivery of said goods to it by said officers, said Minneapolis, St. Paul and Sault St. Marie Railway delivered said goods at St. Paul to the Chicago, Milwaukee and St. Paul Railway, and then and there collected said customs duties and charges, amounting to said sum of $264.31, from said Chicago, Milwaukee and St. Paul Railway.

The Chicago, Milwaukee and St. Paul Railway transported said goods over its line of railway from St. Paul, Minnesota, to Given, Iowa, and there delivered said goods to the defendant, and in July, 1895, the defendant paid to Chicago, Milwaukee and St. Paul Railway the following sums on these goods:

Advanced charges, - - - - -	$264.31
Freight charges, - - - - - -	1.24
Total, - - - - - - -	$265.55

This sum was charged to defendant by its connecting line, as before stated, in the usual course of business, at the time of delivery in June, 1895, and was paid by the defendant later, as a traffic balance, in accordance with the usual custom then, as now, existing between connecting lines of railway.

At the time of the payment, the defendant supposed said advanced charges to be the usual and ordinary freight charges upon the goods, and it did not know, as a matter of fact, that the bulk of the charges consisted of customs duties, until after the institution of this suit.

The defendant transported the goods in June, 1895, in due time, and in good order, over its line of railway from Given, Iowa, to St. Louis, Missouri, and there tendered the goods to the plaintiff, upon the payment of said $265.55 advanced charges.

The plaintiff demanded possession of the goods without the payment of said advanced charges.

The defendant refused to do this, whereupon plaintiff instituted this suit, an action of replevin, and took the goods away from defendant by legal process, and has since retained them without the payment of said charges, or any part thereof. *After the plaintiff came into possession of the goods*, which was, of course, after he unpacked them at his residence on Chouteau avenue in the city of St. Louis, the plaintiff then discovered that a piece of antique embroidery was gone, and some other articles were badly damaged, the injury and loss amounting to the sum of three hundred and fifty dollars. This injury and loss he attributed to the unskillful repacking of the goods, which, it is admitted, was done by the customs officers of the United States at St. Paul, long prior to their receipt by the defendant.

This suit was instituted in the Circuit Court of the City of St. Louis, Missouri.

It was tried there, before Hon. Franklin Ferris, circuit judge, sitting as a jury, who found in favor of the plaintiff bellow, the defendant in error here.

The defendant below, the plaintiff in error here, then perfected an appeal to the St. Louis Court of Appeals, where, on May 7, 1901, the judgment below was affirmed by a divided court, Justices Bland and Goode voting for affirmance, and Justice Bond dissenting. (Record, pp. 33 to 39.)

From this ruling the plaintiff was granted a writ of error, to this court, by Chief Justice Bland, of the St. Louis Court of Appeals, on the 22d day of March, 1902, because the defense in said action was based upon "an authority exercised under a statute of the United States" as appears by the record and proceedings in said cause. (Record, p. 40.)

The Issue.

The issue in this case is, therefore, whether Major Pearce can compel the plaintiff in error to transport these goods for him, free of charge, from Given, Iowa, to St. Louis, Missouri, and also compel the defendant to pay the customs duties lawfully assessed and levied on said goods by the customs officers of the United States.

We do not think that such a burden should be imposed upon the plaintiff in error, in the absence of any undertaking upon its part to assume it.

On the contrary, we think that Major Pearce should, in common with all other good citizens, "render unto Cæsar the things which are Cæsar's."

POINTS AND AUTHORITIES.

I.

The answer tendered a defense based upon an authority exercised under a statute of the United States. (Record, p. 4.)

This confers jurisdiction upon this court to hear and determine this controversy.

Section 709, Revised Statutes of the United States; U. S. Compiled Statutes, 1901, Vol. 1, p. 575.

II.

The government of the United States had, until the payment was made to it, a prior and paramount lien on the goods for the duty which Major Pearce has refused to pay.

Overton on Liens, section 656, p. 709, and cases cited;
Hodges vs. Harris, 6 Pickering (Mass.) 360, sections 3095 et seq.;
Revised Statutes of the United States, 1878, pp. 594 et seq., sections 3058 et seq.;
Rev. Stat. U. S. 1901, vol. 2, pp. 2004 et seq.

III.

The plaintiff in error has, also, a valid lien on the goods in question for the charges advanced by it to its connecting line, in the usual course of business.

Ray on Freight Carriers, section 102, p. 407, and cases cited;
Hutchinson on Carriers, 2d edition, section 478a, p. 541, and cases cited;
Schouler on Bailments, p. 544, and cases cited;
Wells vs. Thomas, 27 Mo. 17;
Moore vs. Henry, 18 Mo. Appeals 41;
Armstrong vs. Railway, 62 Mo. Appeals 642;
Gerber vs. Railway, 63 Mo. Appeals 145.

IV.

The case here relied on by the defendants in error (Mellier vs. St. L. & N. O. Line, 14 Mo. App. 281) is not in point, because there was no agreement here to transport the goods in question IN BOND; nor were they, as in Mellier's case, supra, lost in transit by reason of an attempted misdelivery to an irresponsible connecting carrier, who refused to receive them.

V.

Under the contract of shipment in evidence, the plaintiff in error is not responsible for the injury and loss here claimed, as it is conceded that such injury and loss occurred beyond its own line.

Goldsmith vs. R. R., 12 Mo. App. 479;
Orr vs. R. R., 21 Mo. App. 333;
Myrick vs. R. R., 107 U. S. 102;
Coates vs. Express Co., 45 Mo. 238;
Snider vs. Express Co., 63 Mo. 376;
Dimmitt vs. R. R., 103 Mo. 433;
Nines vs. R. R., 107 Mo. 475;
McCann vs. Eddy, 133 Mo. 59.

VI.

The defendants in error cannot recover in this action, because the refusal of the plaintiff in error to deliver the goods until the charges were paid was a proper, and not a wrongful, act.

See authorities cited under Point I, supra.

VII.

The plaintiff in error has a perfect defense to this action under section 3100 of the statutes of the United States, with the subsequent amendments thereto.

Authorities cited, supra.

ARGUMENT.

I.

Again referring to the Record, p. 4, it will be seen that the defense interposed to this action was based upon an authority exercised under a law of the United States. This defense is found in the answer of the defendant below, the plaintiff in error here.

The ninth assignment of error as found in the defendant's motion for new trial (Record, p. 20) was as follows: "Because the court refused to find, as requested by the defendant, that the defendant was not responsible in this case for any injury occasioned by the examination, unpacking and repacking of the contents of plaintiff's boxes, the sole injury here sued for, when, as the evidence shows, such examination, unpacking and repacking was conceded to have been done by the revenue officers of the United States at St. Paul, a port of entry in the United States, *under the authority of and in due conformance to the revenue laws of the United States.*"

The question, therefore, as to whether or not the act here complained of was exercised under the authority of a law of the United States was specially claimed by defendant below, and plaintiff in error here, in its answer.

The finding of the court below was against that contention.

The attention of the trial court was specifically directed to this defense in the motion for new trial, and there again such defense was stricken out. The ruling of the learned judge below was affirmed by the majority opinion of the St. Louis Court of Appeals, so that the issue thus presented arises under section 709 of the statutes of the United States, and is necessarily a federal question over which this court alone has jurisdiction.

This proposition seems to us to be too plain for argument, and for that reason we have not trespassed upon the time and patience of this court by the citation of the numerous authorities in support of it.

II.

Mr. Overton well says that the government of the United States has a paramount lien for the duties upon imported goods, and that such a principle "has been established and settled by a long course of decisions."

This rule is conceded to be correct, by both the majority and minority opinions, delivered in this case, in the St. Louis Court of Appeals.

It is admitted here that such duties upon this shipment amount to $264.31. Their validity is also unquestioned, as is the fact that Major Pearce has refused, and still refuses, to refund these duties to the plaintiff in error, who has been compelled to advance them in the interest of the shipper, in order to facilitate transportation, and in the usual course of business, as an interstate carrier.

Upon this state of facts, the plaintiff in error is unquestionably entitled to a judgment in this proceeding for such duties, against the defendants in error, and also for costs.

Gerber vs. Ry., 63 Mo. App. 145.

III.

It is also an admitted fact here that the plaintiff in error advanced to its connecting line,

Advanced charges (government duties), -	$264.31
Freight charges, - - - - - -	1.24
	$265.55

The validity of both of the above items is unquestioned.

Judge Ray thus lays down the correct rule as applicable to such cases: "A connecting carrier which advances the charges of the preceding one at the usual rates, without notice of any special arrangement between it and the owner, can demand of the consignee payment of the charges so advanced, and the owner must look for reimbursement to the contracting carrier upon its guaranty."

Mr. Hutchinson thus states it: "But the lien will extend to and embrace advances made to preceding carriers, for their charges for the portion of the transportation performed by them; and the ultimate or final carrier may refuse to deliver the goods until his own charges and all such advances have been paid."

Mr. Schouler says: "A common carrier, then, may usually retain particular goods, by virtue of his lien right, until the freight and charges are paid or tendered him, and he cannot be compelled to give them up sooner.

This lien, moreover, extends to all the proper freight and storage charges upon the goods throughout the whole of a continuous transit over successive lines, since the last carrier or final warehouseman may advance what was lawfully due his predecessors, and hold the property as security for his reimbursement."

The principle above quoted has been settled in Missouri for forty-five years. In Wells vs. Thomas, 27 Mo. 17, decided in 1858, the supreme court of that state held that the last carrier in the line could hold the property until the advanced charges were

paid, "although such sum should exceed the amount for which the company that first received the goods agreed they should be transported."

In Moore vs. Henry, 18 Mo. App. 41, it was held that it was the duty of the last carrier in the line to receive property from a connecting line, and that it was its right to pay the back charges thereon, for the payment of which it would retain a lien on the goods, as well as for its own freight bills.

In Armstrong vs. Railway, 62 Mo. App. 643, it was said: "It is the well-settled law that every carrier through whose hand goods are shipped, becomes the agent of the owner, and has implied authority from him, as such agent, to advance previous charges upon them and collect them again from the next carrier or warehouseman into whose hands he delivers them."

And, in Gerber vs. Railway, 63 Mo. App. 149, a replevin suit, a judgment was entered, under directions from the appellate court, for the amount of such advanced charges, together with costs, against the plaintiff.

This is exactly what the plaintiff in error is entitled to, and what it asks in this cause, upon the admitted facts found in this record.

IV.

The case here relied on by the defendants in error, Mellier vs. St. Louis and New Orleans Transportation Company, 14 Mo. App. 281, has not the slightest application to this controversy.

In that case the bill of lading, or contract of shipment, expressly provided for the transportation of the goods from New Orleans to St. Louis "*in bond.*"

There is no such provision or undertaking to be found in the bill of lading in the case at bar.

There, after making a contract to transport the goods *in bond*, as above stated, from New Orleans to St. Louis, the contracting carrier sold its boats and ceased business as a common carrier. The goods were then tendered to another carrier, who refused to either receive or transport them, resulting in a loss of the goods.

Upon that state of facts the court very properly, we think, held the contracting carrier responsible for the loss.

Here, no contract to transport the goods *in bond* was ever made. In lieu of that, an agreement was made to transport the goods from Yokohama to St Louis. This agreement was fully and faithfully carried out by the contracting carrier and its connecting lines. But because the government officers, in the lawful discharge of their duty in the premises, took possession of the goods at St. Paul, an intermediate point between Yokohama and St. Louis, and examined and assessed the proper revenue duties on them for the government, which one of the carriers paid, the

defendants in error have not only refused to pay such proper charges, but have taken the goods out of plaintiff in error's possession, and now insists that the amount of such duties and freight charges so advanced by the plaintiff in error for them, to its connecting line, in the usual course of business, shall not be refunded to it by them.

The proof here is also that these goods were transported *in bond* from Yokohama to St. Louis. In other words, in the Mellier case here relied on, there was clear and undisputed proof of a breach of the contract of shipment on the part of the contracting carrier, while here the proof is that the contracting carrier and its connecting lines have faithfully performed all the terms of their agreement to transport and deliver the goods in question.

V.

It is also contended by the defendants in error that the act of the Canadian Pacific Railway in changing the bonded destination of these goods from St. Louis to St. Paul was wrongful, because it necessitated an examination and inspection of the goods by the government officers in St. Paul, whereby the repacking of the goods in the cases by such officers was not as skillfully and as carefully done as it had been in Japan, resulting in an injury to the plaintiff.

This contention unnecessarily assumes that the contract of the steamer Empress of India, the original carrier, was to transport these goods *in bond* from Yokohama to St. Louis; whereas, as your Honors will see, no such contract was made. On the contrary, all that the steamer undertook to do was to transport the goods for itself and its connecting lines from Yokohama to St. Louis, and this the proof shows that it did. Besides, it is admitted here that what the government officers did in the way of examination and inspection was precisely what the same officers would have done in St. Louis. It is also conceded that the goods were transported in bond, as a matter of fact, from Yokohama to St. Louis. Now, if the routing of the goods on the way-bills, so far as their bonded character was concerned, by the Canadian Pacific was something which they were authorized to do, or something which they were not forbidden to do by the contract of shipment, then the defendants in error are not entitled to complain. Nor are they entitled to complain here, if the levy and assessment of duties at St. Paul, after an examination of the goods, was precisely the same as it would have been had the goods been transported through to St. Louis and there been examined and inspected. In either event, viewing the transaction with special reference to the contract of shipment, the changing of the bonded destination was neither wrongful, nor did it affect Major Pearce.

If the government officers improperly repacked his boxes, he had, then, and his executors still have, an action against them. If the Canadian Pacific Railway improperly changed the bonded destination, the executors have action against that company; and that company, as your Honors know, has an office for one of its lines in this city and in this state, where such an action could be instituted by the executors of Major Pearce, if they so desired. But the plaintiff in error, a mere connecting carrier, who was not a party to the contract and who it is conceded has done no wrongful act, is entitled to be reimbursed by the executors of Major Pearce for the government duties on these goods which it has advanced in the shape of advanced charges, and for the freight charges, also, which it has advanced upon the same property.

The plaintiff in error has committed no wrongful act in this whole transaction, from beginning to end. The goods were delivered to it in Iowa, and under the laws of that state, as well as the laws of Missouri, it was compelled to receive them. The advanced charges on them, which are conceded to be lawful, it was compelled to pay. The defendants in error are not entitled to recover here of the plaintiff in error, and it is entitled to be reimbursed by the defendants in error; therefore, this action cannot be maintained whatever may be the defendants in error's claim either against the government of the United States or against the Canadian Pacific Railway. We respectfully insist that there can be no escape from this reasonable and correct proposition of law.

Again, when the contract of shipment in this cause is examined, it will be found (Defendant's Abstract of Record, p. 20) that neither the Canadian Pacific Railway nor any of its connecting lines ever undertook to become responsible for these goods beyond its own route.

This agreement can be invoked by the plaintiff in error, as it has been specially admitted, thus avoiding the necessity of pleading it, as it is a part of this record.

Halliday vs. R. R., 74 Mo. 159.

Section 598 of the Revised Statutes of Missouri has no application to this contract, as that statute has no territorial force in such a case as this.

Stanley vs. R. R., 100 Mo. 435.

The rule, therefore, applicable to this shipment is that the defendant was only bound to carry the goods safely over its own route, and this duty was, as the proof shows, fully performed by it.

Myrick vs. R. R., 107 U. S. 107.

And this agreement is not only lawful, even as against section 598, *supra*, but is also valid at common law.

Upon this point your Honors will find the leading cases in Missouri cited under point V of this brief.

So that, as the only agreement plaintiff in error ever made with Major Pearce was to transport these goods in due time and in good order over its own line, and as the proof shows that such undertaking was fully and faithfully performed by the plaintiff in error, the defendants in error were not entitled to recover in this action, and should have been non-suited.

VI.

The allegation in the petition is that defendant "unlawfully detained" the property in question, while the proof is that it did nothing of that kind. It is admitted that the damage here complained of was the result of the unskillful repacking of the goods at St. Paul by the customs officers of the United States there, then acting under valid statutes of the United States authorizing such examination and inspection. Section 3100 of chapter 11 of title xxxiv, contains full and complete authority for such acts.

Whether it was, or was not, is immaterial here, as plaintiff in error's responsibility in the premises was expressly limited, by the contract of shipment, to what occurred on its own line.

The damages here sued for were not caused by the plaintiff in error, nor is it responsible for them.

Its detention of the goods until the charges advanced by it had been refunded to it was lawful and proper, and, therefore, not wrongful. For that reason alone the defendants in error were not entitled to maintain this action.

VII.

By section 3100 of the Revised Statutes of the United States (Rev. Stat. 1878, p. 595), Rev. Stat. U. S. 1901, vol. 2, p. 2027, "all merchandise, * * * * and all other articles imported into the United States from any contiguous foreign country, except as hereinafter provided, * * * shall be unladen in the presence of and be inspected by an inspector, or other officer of the customs, *at the first port of entry or custom house in the United States where the same shall arrive.*"

It is conceded in this case that St. Paul, Minnesota, was not only a port of entry, but that it was the *first* one at which, in the United States, these goods *first* arrived. Their examination and inspection at St. Paul, here constituting the sole ground of complaint in this case, was, therefore, as admitted in the stipulation here on file and as the statute above quoted expressly provides, a

necessary, proper and lawful act, which cannot form a basis for an action in tort. If the plaintiff below and defendant in error here or his agents had desired to avoid this inspection *en route*, he or they could have applied to the proper United States officers, either at Vancouver or St. Paul, to seal and close the goods under section 3102 of the same statute, although even then, as the court will see from the latter part of that section, that the goods were still subject to examination to prevent frauds upon the revenue.

By chapter 190, vol. 1, Supplement Rev. Stat. U. S. 1891, p. 294, of the act of June 10, 1880, St. Paul was made a port of entry. By the substitute for the act of 1880, approved February 23, 1887, vol. 1, Supplement Rev. Stat. U. S. 1891, p. 540, Rev. Stat. U. S. 1901, vol. 2, p. 2027, it is expressly provided that merchandise transported under the provisions of that act shall be conveyed in cars *securely fastened with locks and seals, under the exclusive control of the officers of the customs.*"

It is not averred in this action, nor was it proved, that Major Pearce, or his agents, ever attempted to avail themselves of the provisions of the statutes above quoted.

If they had done so, this controversy might have been avoided by them. Their failure to do so destroys their right of recovery here.

Conclusion.

The view here contended for, by plaintiff in error, is so appropriately expressed in the dissenting opinion of Justice Bond in the St. Louis Court of Appeals (Record, pp. 37, 38, 39), that we have ventured to reproduce a portion of it here.

If it is adopted by this court, as we hope it will be, it will not be the first instance in which the dissenting opinion of that learned judge has finally prevailed and has been adopted as the ultimate law of the case in the courts of last resort.

"The ground of refusal to refund this payment relied upon by respondent is, that by his contract in Japan with the initial carrier, it (the tariff) was to be collected at the port of St. Louis, which was also the place of destination of the goods, and that inasmuch as the sum so paid by the carrier was assessed by the customs officers at St. Paul instead of St. Louis— although the same in amount—he, the owner, should be entitled to receive the goods at St. Louis without repaying the delivering carrier what it had advanced. In other words, respondent's theory, and the judgment in his favor of the lower court, would give him his goods scot-free of duty. This is the ultimate position of the respondent under the record before us. In support thereof, he insists that the government tax was collected in St. Paul by reason of the unlawful delivery of the goods to its officers at that place by the preceding carrier. Granting this for the argument, still it only tends to prove that he would be entitled to an action against the initial

carrier, or the other carrier which diverted the goods, for any damages caused by the acts of the customs officers at St. Paul. It does not at all prove that he should receive his goods without paying the duties leviable thereon under the federal law. The fact that such duties were collected at one port rather than another did not destroy the right of the government to the imposts themselves. It may have constituted a ground for relief in the court of claims, or elsewhere, for injuries to the goods occasioned by the assessment of duties at a particular customs house; but it could not exempt the goods from all liability for the paramount claim of the government enforceable *in rem*, and without satisfaction of which neither the owner nor his agents could obtain the property.

It appears this government lien on the goods was paid, in the case at bar, by appellant and those acting for it; that the goods when delivered to appellant for final carriage to their destination were accompanied by a way-bill including this government charge as a part of the forwarding charges; that appellant on behalf of the owner satisfied and discharged it; that the sum thus paid was the correct amount of the duties to which the goods were subject, and hence was not illegal. The *power* of the government to enforce it was absolute. To release the government's hold on the goods, it was paid. If this had not been done the importation of the goods would have ended at the port of entry where it was assessed. To reimburse the first paying carrier, it was exacted of appellant as a forwarding charge. Possessing these incidents and coming to appellant's notice in this manner and as a condition of further transportation of the goods, the payment thereof on behalf of the respondent in his absence and the existing exigency, was made upon grounds affording a fair inference of agency for him and which entitled appellant to subrogate to the liens of the government for the charges of importation. And even if that lien did not technically arise until the goods got to St. Louis, still the payment made by appellant was a *satisfaction in anticipation* of a lien which must accrue in full vigor at St. Louis and, therefore, entitled appellant, when the goods arrived at that point, to be subrogated to the right of the government the same as if it had delayed the payment of the government dues until that point had been reached.

For there (St. Louis) it had the unquestionable right to satisfy the claim of the government upon the goods before delivering them to the consignee. (Steamboat Virginia vs. Kraft, 25 Mo. 76.)

I hold that the plaintiff has no right to recover in this action, hence I cannot concur in the able opinion of my brothers Bland and Goode."

We can add nothing to the admirable review of the issue in this case, above quoted, except to say that throughout this entire transaction, as this record shows, the plaintiff in error did nothing except to fully perform its duty as a common carrier in the interstate transportation of goods imported into the United States from a

foreign country, and, in so doing, advanced certain customs duties upon such shipment, lawfully imposed by the revenue officers of the United States at the first port of entry. All this had been accomplished before the plaintiff in error received these goods, and before the goods were delivered to it by the preceding and connecting carrier.

As agent for the shipper, and in order to facilitate such transportation of these goods, it advanced these customs duties to the next preceding carrier in the usual course of its business.

It transported these goods over it own line, in due time, and in good order, under a contract, which limited the liability of each carrier to its own line.

The sole complaint here is that the customs officers of the United States at St. Paul, the first port of entry, in lawfully examining, unpacking and repacking the goods there, and in lawfully assessing such customs duties thereon, failed to repack the goods as skillfully as they had been packed originally in Japan, resulting in a loss of and injury to some of the articles.

All these facts are conceded, and it is also admitted, that exactly the same course would have been pursued by the customs officers in St. Louis.

So that when these goods were transported in a bonded wagon, as they would have been, from the custom house, on Eighth and Olive streets, to the residence of Major Pearce, on Chouteau avenue, after being repacked, after examination, at the custom house in St. Louis, in that city, exactly the same loss or injury as here complained of might, and in all probability would, have occurred.

So that in its last analysis the cause of action here stated, if any exists, should properly be heard and determined in the court of claims, or in some forum other than the one in which this case was tried, and, in that event, the suit should not be prosecuted against this plaintiff in error.

In any event, and from any point of view, there ought not to have been a recovery below, or in the appellate court, against the plaintiff in error, upon the admitted facts of this record.

We therefore, for the reasons above stated, respectfully ask for a reversal of the judgment below, with directions to the St. Louis Court of Appeals to enter a judgment there in favor of the plaintiff in error for the amount of the customs duties and freight charges advanced by it, as the agent of the defendants in error, and in their interest, in this case, amounting in all to the sum of $265.55, with accrued interest thereon.

Respectfully submitted,

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